

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

MAILED

FEB 27 1995

Ex parte HARRY L. MALECH
and DANIEL ROTROSEN

PAT. & T.M. OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES

Appeal No. 93-2626
Application 07/527,767¹

ON BRIEF

Before McKELVEY, Chief Administrative Patent Judge and WINTERS
and GRON, Administrative Patent Judges.

BY THE BOARD.

ORDER

This appeal was taken from the examiner's final rejection of claims 1 through 25 on non-prior art grounds.

In the Answer, page 5, first full paragraph, the examiner withdraws the provisional rejection of all the appealed claims under the judicially created doctrine of obviousness-type double patenting over the pending claims of related application Serial No. 07/331,652. Likewise, the examiner withdraws the

¹ Application for patent filed May 24, 1990.

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rejection of claims 9 through 11, 14, and 23 through 25 under 35 USC 112, second paragraph, as indefinite.

The issues remaining for review are: (1) whether the examiner correctly rejected claims 12 through 14 under 35 USC 112, first paragraph, as based on a specification which does not provide adequate, written descriptive support for the invention now claimed and as further based on a non-enabling disclosure; and (2) whether the examiner correctly entered a provisional double patenting rejection of claims 1 through 6, 9 through 20, 23, and 24 under 35 USC 101 as claiming the same invention recited in claims 1, 3, 4, 10 through 16, 18 and 21 of copending application Serial No. 07/331,652.

On consideration of the entire record, we reverse the examiner's rejections essentially for the reasons stated in appellants' main brief and reply brief before the Board.

REVERSED

Fred McKelvey
FRED E. MCKELVEY, Chief)
Administrative Patent Judge)

SDC Sinters
SHERMAN D. WINTERS)
Administrative Patent Judge)

Teddy S. Gron
TEDDY S. GRON)
Administrative Patent Judge)

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BIRCH, STEWART, KOLASCH & BIRCH
301 North Washington Street
P.O. Box 747
Falls Church, Virginia 22040-0747